(23,755)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 604.

THE MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY OF TEXAS, PLAINTIFF IN ERROR,

vs.

S. O. HARRIS.

IN ERROR TO THE JUSTICE COURT, PRECINCT No. 6, HOPKINS COUNTY, STATE OF TEXAS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 21, 1914.

1 *Caption.*

STATE OF TEXAS,
County of Hopkins:

At a term of the Justice Court of Hopkins County, Texas, Precinct Number 6, at Pickton, Texas, the following proceedings were had, to-wit:

No. 169.

S. O. HARRIS
vs.
THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS.

Plaintiff's Attorney, T. J. Flewharty.
Defendant's Attorney-, Dinsmore, McMahan & Dinsmore.

Suit for damages and Attorney's fees in the sum of $19.00. Filed on the 15th day of February, 1913. Citation issued February 15th, 1913. Returned executed on the 15th day of February, 1913. Plaintiff's account filed February 15th, 1913. Defendant's Original Answer filed April 23rd, 1913.

Docket Entries.

No. 169.

S. O. HARRIS
vs.
THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS.

T. J. Flewharty, Plaintiff's Attorney.
John Dinsmore, Defendant's Attorney.

Suit upon account for $19.00, of date —— — ——, due —— — ——, interest — per cent, Attorney's fees — per cent., filed 13th day of Feb., 1913. Citation issued 15th day of Feb., 1913.
2 Returnable to Feb. Term, A. D. 1913, and placed in the hands of C. B. Kennemer, Constable. Mailed to Sheriff of ——. Returned —— — ——. Executed 15th day of Feb., 1913. Feb. 26, 1913, continued by agreement to March Term.
March 26th, 1913, continued to April Term.
April 23rd, 1913, Defendant's General and Special Demurrers overruled.
(Signed) J. F. THREATT, *J. P.*

Plaintiff's Account. Filed Feb. 15, 1913.

Missouri, Kansas & Texas Railway Company of Texas in Account with S. O. Harris.

For loss of broom corn seed in transportation over the said railway to Como	$4.00
For damages for loss of time and expenses in trying to locate same	5.00
For expenses in employing an attorney to collect same	10.00
Total	$19.00

Endorsement.

Plaintiff's Account. Filed February 15, 1913. J. F. Threatt, J. P., Precinct No. 6.

Citation.

THE STATE OF TEXAS:

In Justice's Court, Precinct No. —, Hopkins County.

To the Sheriff or any Constable of Hopkins County, Greeting:

3 You are hereby commanded to summon Missouri, Kansas & Texas Railway Company of Texas, if to be found in your County, to be and appear before me, the undersigned, a Justice of the Peace in and for the County of Hopkins, at my office in Pickton, Precinct No. 6, at the next regular term of said court, to be begun and holden on Wednesday, the 26th day of February, 1913, at ten o'clock a. m., then and there to answer the suit of S. O. Harris, Plaintiff, against Missouri, Kansas & Texas Railway Company of Texas, defendants, filed on the 15th day of February, 1913. File No. 169, for the sum of Nineteen Dollars and — cents, due upon an account as follows:

For loss of broom corn in transportation over said railroad to Como	$4.00
For damages for loss of time and expense in locating same	5.00
For damages for expenses in employing an attorney to collect same	10.00
Total	$19.00

Herein fail not, but of this writ make due return, showing how you have executed the same.

Witness my official signature this the 15th day of February, 1913.

(Signed) J. F. THREATT,
Justice of the Peace, Precinct No. 6,
Hopkins County, Texas.

Endorsement.

Original. No. 169. In Justice's Court, Precinct No. 6, Hopkins County, Texas. Citation. S. O. Harris vs. Missouri, Kansas & Texas Railway Company of Texas. Issued the 15th day of
4 Feb. 1913. J. F. Threatt, Justice of the Peace, Precinct No. 6, Hopkins County, Texas. Came to hand 15th day of Feb., 1913, and executed 15th day of Feb., 1913, by delivering to The Missouri, Kansas & Texas Railway Agent at Como, Texas, the within named defendant, in person, a true copy of this citation.

Fees.

Serving 1 copy	$.70
Mileage 10 miles	.50
Total	$1.20

C. R. KENNEMER,
Constable Precinct No. 6, Hopkins County.

Defendant's Original Answer. Filed April 23, 1913.

Suit in the Justice Court of Hopkins County, Texas, Precinct No. 6, at Pickton, Texas.

No. 169.

S. O. HARRIS
vs.
THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS.

Now comes The Missouri, Kansas & Texas Railway Company of Texas, defendant in the above styled and numbered cause, and demurs generally to the petition or plea filed by the plaintiff in said cause, and says that the same is insufficient in law to sustain a cause of action, and of this defendant prays judgment of the court.

And defendant specially demurs to that part of the plaintiff's petition or plea or account in which plaintiff seeks to recover against this defendant the sum of Five Dollars as damages for time lost and expense incurred by the plaintiff in trying to locate the shipment of broom corn seed involved in this suit, and of this defendant prays judgment of the Court.

5 And defendant specially demurs and specially excepts to that part of plaintiff's petition or plea or account in which the plaintiff seeks to recover against this defendant the sum of Ten Dollars for expenses incurred in employing an attorney to collect the claim involved in this suit, and to represent the plaintiff in this suit; and for such special demurrer and special exception defendant respectfully shows to the Court that the plaintiff is not entitled to recover an attorney's fee in this suit, and that no recovery should be

had by him on that account, because the Act of the Legislature of Texas, approved March 13, 1909, upon which plaintiff's said claim for an attorney's fee is based, the same being Chapter 47, of the Acts of 1909, and entitled

"An act to regulate the presentation and collection of claims for personal services or for labor rendered, or for material furnished, or for overcharges in freights or express, or for any claim for loss or damaged freight, or for stock killed or injured by any person or corporation, against any person or corporation doing business in this State, and providing a reasonable amount of attorney's fees to be recovered, in cases where the amount of such claims shall not exceed Two Hundred—$200.00—Dollars, and declaring an emergency;"

same being Act 2178 and 2179 of the Revised Civil Statutes of Texas of 1911, is void:

"First. Because the said Act of the Legislature of Texas is in violation of and contravenes section one of the fourteenth amendment to the Constitution of the United States of America, in that the said Act denies to this defendant equal protection of the law."

"Second. Because the said Act of the Legislature of Texas is in violation of and contravenes section one of the fourteenth amendment to the Constitution of the United States of America, in that the said action for attorney's fees, which is brought under and authorized by the said law, is a taking of the property of this defendant without due process of law;"

6 "Third. Because the said Act of the Legislature of Texas is in violation of and contravenes section one of the fourteenth amendment to the Constitution of the United States of America, in that the said law abridges the privileges and immunities of a citizen of the United States;" and,

"Fourth. Because the said act of the Legislature of Texas is in part a regulation of, a burden upon, and an interference with interstate commerce, and is contrary to subdivision three, section eight, article one, of the Constitution of the United States of America; and the Act to Regulate Commerce, approved February 4th, 1887, and the acts amendatory thereof and supplemental thereto passed by Congress pursuant to said subdivision, and since the good, if any, and the bad in the act are inseparable, the whole act must fail."

To render judgment against this defendant for an attorney's fee would, therefore, violate said provisions of the Constitution of the United States of America, and the said acts of Congress.

And defendant denies all and singular the statements and the allegations in plaintiff's petition or account contained, and demands strict proof of same, and of this it puts itself upon the country.

And defendant specially denies that the shipment of broom corn seed alleged to have been shipped to plaintiff from St. Louis, Mo., was ever delivered to this defendant by the plaintiff or by any one.

And answering further defendant says that if the said broom corn seed was shipped to plaintiff from St. Louis, Missouri, as alleged, this defendant believes, and alleges the fact to be, that said

7 broom corn seed was delivered to, and shipped over the line of the Missouri, Kansas & Texas Railway Company, in which

connection this defendant respectfully represents that it is a corporation duly incorporated under the laws of the State of Texas, and doing business in said State, and that it operates a line of railway between various points in said State, including the towns of Como and Denison in said State, and North of Denison to Red River; but that this defendant does not own or operate any line of railway outside of the State of Texas, or North of Red River in said State; that the Missouri, Kansas & Texas Railway Company is a corporation duly incorporated under the laws of the State of Kansas, and doing business in the states of Kansas, Oklahoma and Missouri, and operates a line of railway between various points in said states, including the City of St. Louis in the State of Missouri, and various points in the State of Oklahoma, South as far as Red River; but that said Missouri, Kansas & Texas Railway Company does not own or operate any line of railway in the State of Texas, or South of Red River.

Defendant further represents that there was not on February 26th, 1912, and has not been at any time since said date, any partnership between this defendant and the said Missouri, Kansas & Texas Railway Company; and this defendant expressly denies that this defendant and the said Missouri, Kansas & Texas Railway acted as partners in handling said shipment of broom corn, if said shipment of broom corn was delivered over the line of and delivered to the said Missouri, Kansas & Texas Railway Company.

And for further and special answer defendant says that the plaintiff is not entitled to recover an attorney's fee in this case, and that no recovery should be had by plaintiff on that account, because
8 the Act of the Legislature of the State of Texas, approved March 13, 1909, upon which the said claim for an attorney's fee is based, the same being Chapter forty-seven of the acts of 1909, and entitled,

"An act to regulate the presentation and collection of claims for personal service or for labor rendered, or for material furnished, or for overcharges in freight or express or for any claim for lost or damaged freight, or for stock killed or injured by any person or corporation, against any person or corporation doing business in this State, and providing a reasonable amount of attorney's fees to be recovered in cases where the amount of such claims shall not exceed Two Hundred—$200.00—Dollars, and declaring an emergency;"

the same being Articles 2178 and 2179 of the Revised Civil Statutes of Texas of 1911, is void;

1st. Because the said Act of the Legislature of Texas is in violation of and contravenes Section one of the fourteenth amendment to the Constitution of the United States of America, in that it denies to this defendant the equal protection of the law, because the said law upon which said claim for an attorney's fee is based is arbitrary and unreasonable, in that the classification under said law is based upon the amount of the claim on which said attorney's fees are sought to be recovered, in that said law provides that attorney's fees may be recovered, under certain conditions, upon claims which do not exceed the sum of Two Hundred—$200.00—Dollars in amount, but does

not provide for the recovery of attorney's fees upon claims exceeding said amount of Two Hundred—$200.00—and that the said law under which the said claim for an attorney's fee is based is in the nature of a penalty and does not depend upon or grow out of any just demand, and is not a proper obligation upon this defendant or any other defendant.

9 2nd. Because the said Act of the Legislature of Texas is in violation of and contravenes section one of the fourteenth amendment to the Constitution of the United States of America, in that the said action for an attorney's fee, under said law, is a taking of the property of this defendant without due process of law, because said law upon which the said claim for attorney's fee is based, and under which this action is brought, is arbitrary and unreasonable, in that the classification under the said law is based upon the amount of the claim on which said attorney's fees are sought to be recovered, in that the said law provides that attorney's fees may be recovered, under certain conditions, upon claims which do not exceed the sum of Two Hundred—$200.00—Dollars in amount, but does not provide for the recovery of attorney's fees upon claims exceeding the said amount of Two Hundred—$200.00—Dollars; and that the said law upon which said claim for attorney's fees is based is in the nature of a penalty, which does not depend upon or grow out of any just demand, and is not a proper obligation upon this defendant, or any other defendant;

3rd. Because the said Act of the Legislature of Texas is in violation of and contravenes section one of the fourteenth amendment to the Constitution of the United States of America, in that the said law abridges the privileges and immunities of a citizen of the United States, in that the classification under said law is based upon the amount of the claim on which such attorney's fees are sought to be recovered, in that said law provides that attorney's fees may be recovered, under certain conditions, upon claims which do not

10 exceed the sum of Two Hundred—$200.00—Dollars in amount, but does not provide for the recovery of attorney's fees upon claims exceeding said amount of Two Hundred—$200.00—Dollars; and that the said law upon which the claim for an attorney's fee is based is in the nature of a penalty, which does not depend upon or grow out of any just demand, and is not a proper obligation upon this defendant or any other defendant; and,

4th. Because the said Act of the Legislature of Texas is in part a regulation of, and burden upon, and an interference with interstate commerce, and is contrary to subdivision three, section eight, article one, of the Constitution of the United States of America, and the Act to Regulate Commerce, approved February 4, 1887, and the acts amendatory thereof, and supplementary thereto, passed by Congress pursuant to said subdivision, in which connection defendant represents to the Court that this suit grows out of a consignment of broom corn seed shipped from St. Louis in the State of Missouri to Como in the State of Texas, and alleged to have been lost, and that the said claim for attorney's fees, under said law, is based upon, and grows out of the said claim for the alleged loss of said shipment of

broom corn seed; and defendant further represents to the Court, that the good, if any, and the bad in the said act are inseparable, and that on this account the whole act must fail; and defendant further represents to the Court that to render judgment against defendant for an attorney's fee, under said law, would violate the provisions of the Constitution of the United States of America, and the acts of Congress, last above referred to.

11 Wherefore, defendant prays that it be discharged and allowed to go hence without cost and without day.

DINSMORE, McMAHAN & DINSMORE,
Attorneys for the Defendant The Missouri, Kansas & Texas Railway Company of Texas.

THE STATE OF TEXAS,
County of Hunt:

I, Keith Randolph, do solemnly swear that I am the Trainmaster of the Greenville Division of The Missouri, Kansas & Texas Railway Company of Texas, defendant in the above styled and numbered cause, and that I have read the foregoing answer of said defendant, and that the facts therein alleged, and as alleged, are true.

(Signed) KEITH RANDOLPH.

Subscribed and sworn to before me, this 23 day of April, A. D. 1913.

[SEAL.] (Signed) CHAS. C. ROBEY,
Notary Public in and for Hunt County, Texas.

Endorsement.

No. 169. S. O. Harris vs. The M., K. & T. Ry. Co. of Texas. Defendant's Original Answer. Filed this 23rd day of April, A. D. 1913. J. F. Threatt, Justice of the Peace, Precinct N. 6, Hopkins County, Texas.

12 *Statement of Facts.*

Testimony of S. O. Harris.

S. O. HARRIS testified as follows: I am the plaintiff in this suit. During the month of February, 1912, I bought from St. Louis Commission Company of St. Louis, Missouri, some broom corn seed, for which I paid them the sum of Three Dollars and Fifty Cents. I understand this broom corn seed was shipped to me at Como, Texas, by the St. Louis Commission Company of St. Louis, Missouri, over the lines of the Missouri, Kansas & Texas Railway Company and The Missouri, Kansas & Texas Railway Company of Texas on February 26th, 1912. I called on the agent of The Missouri, Kansas & Texas Railway Company of Texas at Como, Texas, several times for the shipment of broom corn seed, but have never received it. I put in a claim with the said agent, and also wrote several letters to Mr.

W. L. Seelig, the Auditor of The Missouri, Kansas & Texas Railway Company, and to Mr. R. W. Rigdon, the Traffic Claim Agent of The Missouri, Kansas & Texas Railway Company of Texas. In my last letter to Mr. Seelig I offered to accept the sum of Three Dollars in settlement of my claim. I have never received the shipment of broom corn seed, nor any pay for it.

Agreed Evidence.

It was admitteed by both parties to this suit that the shipment of broom corn seed involved in the suit was delivered to The Missouri, Kansas & Texas Railway Company at St. Louis, Missouri, for shipment to the plaintiff at Como, Texas, and delivered by that Company to The Missouri, Kansas & Texas Railway Company of Texas, and that it had never been delivered to the plaintiff. It was also admitted that the plaintiff had complied with the terms of
13 the Texas Attorney's Fees Statutes concerning the presentation of this claim, and that the claim had not been paid. It was also admitted that the plaintiff based his claim for attorney's fee upon the Texas Attorney's Fees Statute.

Agreement of Counsel.

It is hereby agreed between the parties hereto that the above is a true and correct statement of all the material facts introduced in evidence on the trial of the above case.

T. J. FLEWHARTY, *Attorney for Plaintiff.*
DINSMORE, McMAHAN & DINSMORE,
Attorneys for Defendant.

Judgment of Court.

No. 169.

S. O. HARRIS
vs.
THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS.

APRIL 23RD, 1913.

This day the above styled and numbered cause coming on to be heard, came the plaintiff in person, and by attorney, and came the defendant by its attorney, and announced ready for trial, and a jury having been waived, the matters of law as well as of fact were admitted to the Court, and the Court having heard the pleadings, evidence, and argument of counsel, and being fully advised in the premises, is of the opinion that the plaintiff, S. O. Harris, ought to recover of and from the defendant, The Missouri, Kansas
14 & Texas Railway Company of Texas, the sum of Thirteen Dollars and Fifty Cents—$13.50—as follows:

Damages for loss of broom corn seed Three Dollars Fifty Cents—$3.50—Attorney's Fees Ten Dollars—$10.00—.

It is therefore ordered, adjudged and decreed by the Court that the plaintiff, S. O. Harris, recover of and from the defendant, The Missouri, Kansas & Texas Railway Company of Texas, the sum of Thirteen Dollars and Fifty Cents—$13.50—divided as above stated, for all of which let execution issue.

J. F. THREATT,
Justice of the Peace.

Notice of Appeal.

APRIL 23RD, 1913.

After the rendition of the foregoing judgment, came the defendant, by its attorney, and in open court excepted to the Court's action in rendering the said judgment, and gave notice of appeal to the Supreme Court of the United States, which notice was duly entered on the docket of said Court.

J. F. THREATT,
Justice of the Peace.

15 In the Supreme Court of the United States.

No. —.

THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS,
Plaintiff in Error,
vs.
S. O. HARRIS, Defendant in Error.

Assignment of Errors.

Now comes The Missouri, Kansas & Texas Railway Company of Texas, plaintiff in error in this cause, and makes and files this, its assignment of errors committed by the Justice Court of Justice Precinct No. 6, Hopkins County, Texas, in the disposition of said cause, as shown by the record and proceedings therein.

I.

The said Justice Court erred in overruling and in not sustaining plaintiff in error's first special exception to that part of the demand claiming an attorney's fee, the same reading as follows:

"Because the said act of the Legislature of Texas is in violation of and contravenes section one of the fourteenth amendment to the Constitution of the United States of America, in that the said act denies to this defendant the equal protection of the law."

II.

The said Justice Court erred in overruling and in not sustaining plaintiff in error's second special exception to that part of the demand claiming an attorney's fee, the same reading as follows:

"Because the said act of the Legislature of Texas is in violation of and contravenes section one of the fourteenth amendment to the Constitution of the United States of America, in that the said action for attorney's fees, which is brought under and authorized by the said law, is a taking of the property of this defendant without due process of law."

16 III.

The said Justice Court erred in overruling and in not sustaining plaintiff in error's fourth special exception to that part of the demand claiming an attorney's fee, the same reading as follows:

"Because the said act of the Legislature of Texas is in part a regulation of, a burden upon, and an interference with interstate commerce, and is contrary to subdivision three, section eight, article one of the Constitution of the United States of America; and the Act to Regulate Commerce, approved February 4, 1887, and the acts amendatory thereof and supplemental thereto passed by Congress pursuant to said subdivision, and since the good, if any, and the bad in the act are inseparable, the whole act must fail."

IV.

The said Justice Court erred in holding the statute upon which the claim for an attorney's fee is based valid, the same being entitled,

"An Act to regulate the presentation and collection of claims for personal services or for labor rendered, or for material furnished, or for overcharges in freight or express, or for any claim for lost or damaged freight, or for stock killed or injured by any person or corporation, against any person or corporation doing business in this State, and providing a reasonable amount of attorney's fees to be recovered, in cases where the amount of such claims shall not exceed two hundred ($200) dollars, and declaring an emergency,"

and now forming Articles 2178 and 2179 of the Texas Revised Civil Statutes of 1911, as against plaintiff in error's objection thereto; that said statute is void because in conflict with that provision of Section 1 of the Fourteenth Amendment to the Constitution of the United States, which prohibits the states from denying to any person within their jurisdiction the equal protection of the laws.

V.

The said court erred in holding the aforesaid statute upon which the claim for an attorney's fee is claimed valid as against plaintiff in error's objection thereto that the said statute is void, because
17 in conflict with that provision of Section 1 of the Fourteenth Amendment to the Constitution of the United States, which prohibits the states from depriving any person of property without due process of law.

VI.

The said Justice Court erred in holding the aforesaid statute upon which the claim for an attorney's fee is based valid as against the

plaintiff in error's objection thereto that the said statute is void because it in part conflicts with Subdivision 3, Section 8, Article 1 of the Constitution of the United States which confers upon Congress the power to regulate commerce with foreign nations and among the several states and the Act to Regulate Commerce approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, and since the statute is indivisible and therefore that which is good, if any, cannot be separated from that which is bad it must fail in whole.

VII.

The said Justice Court erred in holding the aforesaid Attorney's Fee Statute valid as against plaintiff in error's special pleas numbers one, two and four set out in its answer, and in rendering judgment in favor of defendant in error for an attorney's fee based thereon.

Wherefore, plaintiff in error prays that the judgment of the Justice Court of Justice Precinct No. 6, Hopkins County, Texas, in so far as it awarded defendant in error an attorney's fee, be reversed, set aside and held for naught, and that judgment be rendered for plaintiff in error granting its rights under the Constitution and laws of the United States. Plaintiff in error also prays for judgment for its costs and for general relief.

ALEX. S. COKE,
ALEXANDER H. McKNIGHT,
DINSMORE, McMAHAN & DINSMORE,
Attorneys for Plaintiff in Error.

JOSEPH M. BRYSON,
ALDIS B. BROWNE,
Of Counsel.

18 [Endorsed:] No. —. In the Supreme Court of the United States. The Missouri, Kansas & Texas Railway Company of Texas, Pl't'ff in Error, vs. S. O. Harris, Def't in Error. Assignment of Errors. Filed this 9th day of June A. D. 1913. J. F. Threatt, Justice of the Peace, Precinct No. 6, Hopkins County, Texas.

19 In the Supreme Court of the United States.

No. —.

THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS,
Plaintiff in Error,
vs.
S. O. HARRIS, Defendant in Error.

Petition for Writ of Error.

To the Honorable Supreme Court of the United States:

The petition of The Missouri, Kansas & Texas Railway Company of Texas, a corporation chartered and existing under the laws of the

State of Texas, with its principal office in the City of Dallas, Dallas County, said State, respectfully shows:

That petitioner was defendant in a certain case originating in the Justice Court of Justice Precinct No. 6, Hopkins County, Texas, wherein the said S. O. Harris was plaintiff, said cause being numbered 169 on the docket of said court and styled S. O. Harris vs. The Missouri, Kansas & Texas Railway Company of Texas, and in which judgment was, on April 23, 1913, rendered in favor of the defendant in error and against your petitioner for the sum of $3.50 and an attorney's fee of $10.00, a total of $13.50, with interest thereon from said date at the rate of six per cent. per annum and all costs of suit.

That the said Justice Court is the highest court of the State of Texas in which a decision of this action could be had.

That in said cause petitioner duly filed its answer denying the allegations of plaintiff's petition and asserting, both by exception and plea, that the statute of the State of Texas upon which the claim for an attorney's fee was based is void:

1. Because in conflict with that provision of Section 1 of the Fourteenth Amendment to the Constitution of the United States, which prohibits the states from denying to any person within their jurisdiction the equal protection of the laws.

2. Because in conflict with that provision of said section 1 of the Fourteenth Amendment to the Constitution of the United States, which prohibits the states from depriving any person of property without due process of law. And

3. Because in part in conflict with Subdivision 3, Section 8, Article 1 of the Constitution of the United States, which confers upon the Congress power to regulate commerce with foreign nations and among the several states and the Act to Regulate Commerce approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, and since the different parts of the act are so intermingled that the good, if any, cannot be separated from the bad, the act must fall as a whole; the said statute being entitled,

"An Act to regulate the presentation and collection of claims for personal services or for labor rendered, or for material furnished, or for overcharges in freight or express, or for any claim for lost or damaged freight, or for stock killed or injured by any person or corporation, against any person or corporation doing business in this State, and providing a reasonable amount of attorney's fees to be recovered, in cases where the amount of such claims shall not exceed two hundred ($200) dollars, and declaring an emergency,"

and being Articles 2178 and 2179 of the Texas Revised Civil Statutes of 1911, reading as follows:

"Article 2178. Hereafter, any person in this state having a valid, bona fide claim against any person or corporation doing business in this state, for personal services rendered or for labor done, or for material furnished, or for overcharges on freight or express, or for any claim for lost or damaged freight, or for stock killed or injured by such person or corporation, its agents or employés, may present the same to such person or corporation or to any duly authorized agent thereof, in any county where suit may be instituted for the

same; and if, at the expiration of thirty days after the presentation of such claim, the same has not been paid or satisfied, he may immediately institute suit thereon in the proper court; and if he shall finally establish his claim, and obtain judgment for the full amount thereof, as presented for payment to such person or corporation in such court, he shall be entitled to recover the amount of such claim and all costs of suit, and, in addition thereto, a reasonable
21 amount as attorney's fees; provided, he has an attorney employed in the case, not to exceed twenty dollars, to be determined by the court or jury trying the case.

"Art. 2179. Nothing in this chapter shall be construed to repeal, or in any manner affect, any provision of the law now in force, giving a remedy to persons having claims of the character mentioned in this chapter, but the same shall be considered as cumulative of all other remedies given to such person or persons."

That said statute was declared void under the State Constitution by the Court of Civil Appeals for the Second Supreme Judicial District of Texas at Fort Worth, in the case of Fort Worth & Denver City Railway Company vs. Loyd, 132 S. W. R., 899, in which a writ of error was denied by the Supreme Court of Texas, and based upon which this court, in the case of Gulf, Colorado & Santa Fe Railway Company vs. Dennis, 224 U. S., 503, reversed the judgment of the County Court of Milan County, Texas, and remanded the cause for further proceedings not inconsistent with its opinion therein; but notwithstanding this the Supreme Court of Texas, in Missouri, Kansas & Texas Railway Company of Texas vs. Mahaffey, 150 S. W. R., 881, sustained the statute under the State Constitution.

That the said Justice Court overruled and denied the aforesaid contentions of petitioner as to the invalidity of said statute and rendered judgment as aforesaid in favor of defendant in error for an attorney's fee, based upon the statute, in the sum of $10.00, thereby denying the rights, titles, privileges and immunities specially set up and claimed by petitioner under the said provisions of the constitution and laws of the United States, and in so holding and rendering judgment the court committed errors as are specifically pointed out in the assignment of errors filed herein, to which assignment reference is made.

Wherefore, petitioner prays that a writ of error may be allowed to bring up for review before the Supreme Court of the United States the said order and judgment of the said Justice Court of Jus-
22 tice Precinct No. 6, Hopkins County, Texas, and that a duly authenticated transcript of the record, proceedings and papers may be sent to the Supreme Court of the United States, and that it have such other and further relief in the premises as may be meet and just, and thus your petitioner will ever pray.

ALEX. S. COKE,
ALEXANDER H. McKNIGHT,
DINSMORE, McMAHAN & DINSMORE,
Attorneys for Plaintiff in Error.

JOSEPH M. BRYSON,
ALDIS B. BROWNE,
Of Counsel.

The writ of error prayed for in the foregoing petition is hereby allowed, the same to operate as a supersedeas, and the bond for that purpose is fixed at the sum of five hundred dollars ($500.00).

Done this the 16 day of May, in the year of our Lord, one thousand, nine hundred thirteen.

J. R. LAMAR,
Associate Justice of the Supreme Court of the United States.

23 [Endorsed:] No. —. In the Supreme Court of the United States. The Missouri, Kansas & Texas Railway Company of Texas, Pl't'ff in Error, vs. S. O. Harris, Def't in Error. Petition for Writ of Error. Filed this 9th day of June A. D. 1913. J. F. Threatt, Justice of the Peace, Precinct No. 6, Hopkins County, Texas.

24 In the Supreme Court of the United States.

No. —.

THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS,
Plaintiff in Error,
vs.
S. O. HARRIS, Defendant in Error.

Writ of Error Bond.

Know all men by these presents: That we, The Missouri, Kansas & Texas Railway Company of Texas, a corporation chartered and existing under the laws of the State of Texas, with its principal office in the City of Dallas, Dallas County, Texas, as principal, and American Surety Company of New York, a corporation organized and existing under the laws of the State of New York, and having an office and regular place of business in the City of Dallas, Dallas County, Texas, as surety, are held and firmly bound unto S. O. Harris, in the sum of Five Hundred Dollars ($500.00), lawful money of the United States of America, to the payment of which well and truly to be made we bind ourselves, and each of us, and our and each of our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated at Dallas, Texas, this the 9th day of May, in the year of our Lord one thousand, nine hundred thirteen.

Whereas, in the above entitled cause the said The Missouri, Kansas & Texas Railway Company of Texas seeks to prosecute its writ of error in the Supreme Court of the United States to reverse the judgment rendered in said cause by the said Justice Court of Justice Precinct No. 6, Hopkins County, Texas, in favor of defendant in error and against plaintiff in error:

25 Now, therefore, the condition of this obligation is such that if the above named plaintiff in error shall prosecute its writ

of error to effect and answer all damages and costs that may be adjudged if it shall fail to make good its plea, then this obligation to be void; otherwise, to remain in full force and effect.

THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS,
(Signed) By ALEX. S. COKE, *Its General Attorney.*
AMERICAN SURETY COMPANY OF NEW YORK,
[L. S.] (Signed) By DEWEES J. MATTHEWS,
Its Attorney in Fact.

The above and foregoing bond is approved, this the 16th day of May, in the year of our Lord one thousand, nine hundred thirteen.

(Signed) J. R. LAMAR,
Associate Justice of the Supreme Court of the United States.

26 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable Justice of the Justice Court, Precinct No. 6, Hopkins County, State of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Justice Court, before you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between S. O. Harris, plaintiff, and The Missouri, Kansas & Texas Railway Company of Texas, defendant, wherein was drawn in question the validity of a treaty or statue of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the
27 construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said defendant, The Missouri, Kansas & Texas Railway Company of Texas, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid

being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 16th day of May, in the year of our Lord one thousand nine hundred and thirteen.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
J. R. LAMAR,
Associate Justice of the Supreme Court of the United States.

28 UNITED STATES OF AMERICA, *ss:*

To S. O. Harris, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Justice Court, Precinct No. 6, Hopkins County, State of Texas, wherein The Missouri, Kansas & Texas Railway Company of Texas is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable J. R. Lamar, Associate Justice of the Supreme Court of the United States, this sixteenth day of May, in the year of our Lord one thousand nine hundred and thirteen.

J. R. LAMAR,
Associate Justice of the Supreme Court of the United States.

29 Service of the within writ is hereby waived and service in said cause is accepted this the 9th day of June, A. D. 1913.

T. J. FLEWHARTY,
Attorney for Defendant in Error S. O. Harris.

30 *Bill of Costs.*

No. 169.

S. O. HARRIS
vs.
THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS.

Justice's Fees	$4.30
Constable's Fees	1.20
Total	**$5.50**

Certificate.

THE STATE OF TEXAS,
County of Hopkins:

I, J. F Threatt, Justice of the Peace in and for Precinct No. 6, Hopkins County, Texas, do hereby certify that the foregoing is a true, full and complete transcript of the record and proceedings in the case of S. O. Harris versus The Missouri, Kansas & Texas Railway Company of Texas, No. 169, as the same now appear on file in my office; that a correct copy of the assignment of errors attached to said transcript is now on file in my office; that the original writ of error bond, a true copy of which is attached to the transcript, is now on file in my office, and that the original petition for a writ of error from the Supreme Court of the United States to the Justice's Court of Precinct No. 6, Hopkins County, Texas, the original writ of error, and the original citation in error are thereto attached, together with a statement of the costs.

I do further hereby certify that no opinion was rendered in said cause, the judgment being the only evidence of what
31 was decided, and that a Justice Court in Texas has no seal and no official clerk.

In testimony whereof, witness my official signature, at my office in the town of Pickton, Hopkins County, Texas, this 9th day of June, A. D. 1913.

J. F. THREATT,
Justice of the Peace, Precinct No. 6,
Hopkins County, Texas.

Transmittal.

UNITED STATES OF AMERICA:

In obedience to the commands of the within writ, I hereby transmit to the Supreme Court of the United States a duly certified transcript of the complete record of the proceedings of the within entitled cause, with all things concerning the same.

In testimony whereof, witness my official signature, at my office in the town of Pickton, Hopkins County, Texas, this 9th day of June, A. D. 1913.

J. F. THREATT,
Justice of the Peace, Precinct No. 6,
Hopkins County, Texas.

Certificate of County Clerk.

STATE OF TEXAS,
County of Hopkins:

I, E. P. Rogers, Clerk of the County Court in and for Hopkins County, Texas, do hereby certify that J. F Threatt, whose name is attached to the foregoing certificate and transmittal, is the duly

qualified and acting Justice of the Peace in and for Justice
32 Precinct No. 6, Hopkins County, Texas, and that Justice Courts in Texas have no seals and no official clerk.

In testimony whereof, witness my hand and seal of office, in the City of Sulphur Springs, Hopkins County, Texas, this the 9th day of June, A. D. 1913.

[Seal County Court of Hopkins County, Texas.]

E. P. ROGERS,
Clerk County Court, Hopkins County, Texas.

Endorsed on cover: File No. 23,755. Texas, Hopkins County, Justice Court, Precinct No. 6. Term No. 604. The Missouri, Kansas & Texas Railway Company of Texas, plaintiff in error, vs. S. O. Harris. Filed June 16th, 1913. File No. 23,755.

12

FILED
FEB 5 1916
JAMES D. MAHER
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS,
Plaintiff in Error,
vs.
S. O. HARRIS,
Defendant in Error.
} No. 804.

IN WRIT OF ERROR TO THE JUSTICE COURT OF PRECINCT NO. 4, HARRIS COUNTY, TEXAS.

BRIEF FOR PLAINTIFF IN ERROR.

ALEXANDER S. COKE,
A. H. McKNIGHT,
Attorneys for Plaintiff in Error.

JOSEPH H. BEYSON,
A. S. BROWNE,
Of Counsel.

St. Louis Law Printing Co., Printers' Bldg., Wash and Sixteenth Sts., St. Louis, Mo.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS,
Plaintiff in Error,

vs.

S. O. HARRIS,
Defendant in Error.

No. 604.

ON WRIT OF ERROR TO THE JUSTICE COURT OF PRECINCT NO. 6, HOPKINS COUNTY, TEXAS.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

This suit was filed to recover $4.00 account the loss of a shipment of broom corn seed from St. Louis, State of Missouri, to Como, State of Texas, $5.00 damages for loss of time and expenses trying to locate same and an attorney's fee of $10.00 (Rec., p. 2). The at-

torney's fee was claimed under an Act of the Legislature of Texas, approved March 13, 1909, entitled:

> "An Act to regulate the presentation and collection of claims for personal services or for labor rendered, or for material furnished, or for overcharges in freight or express, or for any claim for lost or damaged freight, or for stock killed or injured by any person or corporation, against any person or corporation doing business in this State, and providing a reasonable amount of attorney's fees to be recovered, in cases where the amount of such claims shall not exceed two hundred ($200) dollars, and declaring an emergency."

Plaintiff in error urged the invalidity of this Act on the grounds that it denies to those subject thereto the equal protection of the laws and deprives them of their property without due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States, and that the Act in part conflicts with Subdivision 3, Section 8, Article I of the Federal Constitution and the Act to Regulate Commerce approved February 4, 1887, and the Acts amendatory thereof and supplementary thereto, and to this extent is void, and since the good, if any, and the bad in it are inseparable the Act must fail in whole. Plaintiff in error also urged that, the shipment being interstate, the Texas law has been superseded by the Federal law, under which attorney's fees are not recoverable (Rec., pp. 4-7). These contentions were overruled by the Court and judgment was rendered in favor of defendant in error for the full amount claimed, including the attorney's fee of $10.00 (Rec., p. 9).

Under the Constitution and laws of Texas no appeal lies from a decision of the Justice Court in a case in-

volving less than $20.00 nor is there any method provided for reviewing the decisions in such cases. The judgment rendered against plaintiff in error was therefore final.

That part of the judgment relating to damages is not questioned. The contentions here made relate solely to the attorney's fee awarded, the validity of the Act upon which it is based and the application of the Act to interstate shipments.

A writ of error from this Court was allowed, to operate as a *supersedeas*, by Associate Justice Lamar (Rec., pp. 15-16), and writ of error bond and assignments of error were fully filed, the latter reading as follows:

ASSIGNMENTS OF ERROR.

1. The said Justice Court erred in overruling and in not sustaining plaintiff in error's first special exception to that part of the demand claiming an attorney's fee, the same reading as follows:

"Because the said Act of the Legislature of Texas is in violation of and contravenes Section 1 of the Fourteenth Amendment to the Constitution of the United States of America, in that the said Act denies to this defendant the equal protection of the law."

2. The said Justice Court erred in overruling and in not sustaining plaintiff in error's second special exception to that part of the demand claiming an attorney's fee, the same reading as follows:

"Because the said Act of the Legislature of Texas is in violation of and contravenes Section 1 of the Fourteenth Amendment to the Constitution of the United States of America, in that the said action for attorney's fees, which is brought under and authorized by the said law, is a taking of the

property of this defendant without due process of law."

3. The said Justice Court erred in overruling and in not sustaining plaintiff in error's fourth special exception to that part of the demand claiming an attorney's fee, the same reading as follows:

"Because the said Act of the Legislature of Texas is in part a regulation of, a burden upon, and an interference with interstate commerce, and is contrary to Subdivision 3, Section 8, Article I of the Constitution of the United States of America; and the Act to Regulate Commerce, approved February 4, 1887, and the acts amendatory thereof and supplementary thereto passed by Congress pursuant to said subdivision, and since the good, if any, and the bad in the Act are inseparable, the whole Act must fail."

4. The said Justice Court erred in holding the statute upon which the claim for an attorney's fee is based valid, the same being entitled,

"An Act to regulate the presentation and collection of claims for personal services or for labor rendered, or for material furnished, or for overcharges in freight or express, or for any claim for lost or damaged freight, or for stock killed or injured by any person or corporation, against any person or corporation doing business in this State, and providing a reasonable amount of attorney's fees to be recovered, in cases where the amount of such claims shall not exceed two hundred ($200) dollars, and declaring an emergency," and now forming Articles 2178 and 2179 of the Texas Revised Civil Statutes of 1911, as against plaintiff in error's objection thereto, that said statute is void because in conflict with that provision of Section 1 of the Fourteenth Amendment to the Constitution of the United States, which prohibits the states from denying to any person within their

jurisdiction the equal protection of the laws.

5. The said Court erred in holding the aforesaid statute upon which the claim for an attorney's fee is claimed valid as against plaintiff in error's objection thereto that the said statute is void because in conflict with that provision of Section 1 of the Fourteenth Amendment to the Constitution of the United States, which prohibits the states from depriving any person of property without due process of law.

6. The said Justice Court erred in holding the aforesaid statute upon which the claim for an attorney's fee is based valid as against the plaintiff in error's objection thereto that the statute is void because it in part conflicts with Subdivision 3, Section 8, Article I of the Constitution of the United States which confers upon Congress the power to regulate commerce with foreign nations and among the several states and the Act to Regulate Commerce approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, and since the statute is indivisible and therefore that which is good, if any, cannot be separated from that which is bad it must fail in whole.

7. The said Justice Court erred in holding the aforesaid Attorney's Fee Statute valid as against plaintiff in error's special pleas numbers one, two and four set out in its answer and in rendering judgment in favor of defendant in error for an attorney's fee based thereon (Rec., p. 9).

STATUTE INVOLVED.

Article 2178. Hereafter, any person in this state having a valid, *bona fide* claim against any person or corporation doing business in this state, for personal services rendered or for labor done, or for material furnished, or for overcharges on freight or express, or for any claim for lost or

damaged freight, or for stock killed or injured by such person or corporation, its agents or employes, may present the same to such person or corporation or to any duly authorized agent thereof, in any county where suit may be instituted for the same; and if, at the expiration of thirty days after the presentation of such claim, the same has not been paid or satisfied, he may immediately institute suit thereon in the proper court; and if he shall finally establish his claim, and obtain judgment for the full amount thereof, as presented for payment to such person or corporation in such court, he shall be entitled to recover the amount of such claim and all costs of suit, and, in addition thereto, a reasonable amount as attorney's fees; provided, he has an attorney employed in the case, not to exceed twenty dollars, to be determined by the Court or jury trying the case.

Art. 2179. Nothing in this chapter shall be construed to repeal, or in any manner affect, any provision of the law now in force, giving a remedy to persons having claims of the character mentioned in this chapter, but the same shall be considered as cumulative of all other remedies given to such person or persons.

BRIEF OF ARGUMENT.

I.

The Act of the Legislature in question is void because in conflict with that provision of Section 1 of the Fourteenth Amendment to the Constitution of the United States which guarantees the equal protection of the laws.

An Act of the same general character was condemned by this Court in *G. C. & S. F. Ry. Co. v. Ellis*, 165 U. S. 150, where the principles that control the case are fully and clearly stated. We place the material parts of the two acts—one passed in 1889 and the other in 1909—in parallel columns that their points of similarity and their points of difference may be readily noted:

Act of 1889.	**Act of 1909.**
Caption.	Caption.
An Act to regulate the presentation and collection of claims for personal services or labor, or for damages or for overcharge on freight against railway corporations doing business in this state in case where the amount claimed does not exceed fifty dollars, and to fix the measure of damages recover-	An Act to regulate the presentation and collection of claims for personal services or for labor rendered, or for material furnished, or for overcharges in freight or express, or for any claim for lost or damaged freight, or for stock killed or injured by any person or corporation, against any person or cor-

able in certain of such cases.

Section 1.

That after the time when this act shall take effect any person in this state having a valid *bona fide* claim for personal services rendered or labor done, or for damages, or for overcharges on freight, or claims for stock killed or injured by the train of any railway company, provided that such claims for stock killed or injured shall be presented to the agent of the company nearest to the point where such stock was killed or injured, against any railway corporation operating a railroad in this state, and the amount of such claim does not exceed fifty dollars, may present the same, verified by his affidavit, for payment to such corporation by filing it with any station agent of such corporation in any county where suit may be instituted for the same, and if,

poration doing business in this State, and providing a reasonable amount of attorney's fees to be recovered, in cases where the amount of such claims shall not exceed two hundred ($200) dollars, and declaring an emergency.

Section 1.

Hereafter, any person in this state having a valid, *bona fide* claim against any person or corporation doing business in this state, for personal services rendered or for labor done, or for material furnished, or for overcharges on freight or express, or for any claim for lost or damaged freight, or for stock killed or injured by such person or corporation, its agents or employes, may present the same to such person or corporation or to any duly authorized agent thereof, in any county where suit may be instituted for the same; and if, at the expiration of thirty days after the presentation of such claim, the same has not been paid or satisfied, he may immediately institute suit thereon in the proper court; and if he shall finally establish his claim, and obtain judgment for

at the expiration of thirty days after such presentation, such claim has not been paid or satisfied, he may immediately institute suit thereon in the proper court; and if he shall finally establish his claim, and obtain judgment for the full amount thereof, as presented for payment to such corporation in such court, or any court to which the suit may have been appealed, he shall be entitled to recover the amount of such claim and all costs of suit, and in addition thereto all reasonable attorney's fees, provided he has an attorney employed in his case, not to exceed ten dollars, to be assessed and awarded by the Court or jury trying the issue.

the full amount thereof, as presented for payment to such person or corporation in such court, he shall be entitled to recover the amount of such claim and all costs of suit, and, in addition thereto, a reasonable amount of attorney's fees; provided, he has an attorney employed in the case, not to exceed twenty dollars, to be determined by the Court or jury trying the case.

Substantially the only difference between the two acts, it will be seen, is that the first is limited to railway corporations, while the Act of 1909 applies to all persons and corporations who owe debts of the classes enumerated. There are minor differences—for instance, the last act includes some claims not covered by the first, there is a difference between the amount of attorney's fee that can be recovered, and the limit for amounts claimed under the two acts is different—but these do not call for the application of different principles or make necessary a different application of the same principles. The precise question left undetermined by the case cited, then, is whether there

is a reasonable basis for the classification which imposes an attorney's fee upon persons, natural or artificial, against whom claims are presented and judgments recovered for labor done, for material furnished, for overcharges on freight or express, for loss or damage on freight, or for stock killed or injured, where the amount demanded does not exceed $200.00, while persons against whom claims of other classes are presented and judgments recovered under similar circumstances are not so burdened.

Does the fact that this act applies to all persons against whom claims of the classes named are presented distinguish it from an act applicable alone to railway corporations? Clearly not. A brief consideration will make this plain.

It is well settled that corporations are persons within the provisions of the Fourteenth Amendment (*G. C. & S. F. Ry. Co. v. Ellis*, 165 U. S. 154; *Smyth v. Ames*, 169 U. S. 522; *Blake v. McClung*, 172 U. S. 259, and *Hale v. Henkel*, 201 U. S. 76), and that while State Legislatures, in passing laws, may classify, purely arbitrary action cannot be sustained by calling it classification, there must be a reasonable basis for the classification, which means that the discrimination must be based upon matters which have some relation to the object sought to be accomplished (*G. C. & S. F. Ry. Co. v. Ellis*, 165 U. S. 150; *A. T. & S. F. Ry. Co. v. Matthews*, 174 U. S. 96; *Cotting v. Kansas City Stock Yards Co.*, 183 U. S. 79; *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540, and *Southern Ry. Co. v. Greene*, 216 U S. 400).

The principle is thus stated in the Ellis case (page 155):

> " * * * yet it is equally true that such classification cannot be made arbitrarily. The State may not say that all white men shall be subjected to the payment of the attorneys' fees of parties successfully suing them and all black men not. It may not say that all men beyond a certain age shall be alone thus subjected, or all men possessed of a certain wealth. These are distinctions which do not furnish any proper basis for the attempted classification. That must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis."

Again (page 165):

> "It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection."

And as follows in *Railway Company v. Matthews, supra* (page 104):

> "On the other hand, it is also true that the equal protection guaranteed by the Constitution forbids the Legislature to select a person, natural or artificial, and impose upon him or it burdens and liabilities which are not cast upon others similarly situated. It cannot pick out one individual, or one corporation, and enact that whenever he or it is sued the judgment shall be for double damages, or subject to an attorney fee in favor of the plaint-

> iff, when no other individual or corporation is subjected to the same rule. Neither can it make a classification of individuals or corporations which is purely arbitrary, and impose upon such class special burdens and liabilities. Even where the selection is not obviously unreasonable and arbitrary, if the discrimination is based upon matters which have no relation to the object sought to be accomplished, the same conclusion of unconstitutionality is affrmed."

Any number of quotations might be made, but, as was said in *Barrett v. Indiana*, 229 U. S. 30:

> "This Court has had such frequent occasion to consider this matter that extended discussion is not necessary now."

Now, if we substitute "certain classes" for "a certain class", it may be said of the Act of 1909 as was said by this Court of the Act of 1889 (page 153):

> "The act singles out a certain class of debtors and punishes them when for like delinquencies it punishes no others. They are not treated as other debtors, or equally with other debtors. They cannot appeal to the courts as other litigants under like conditions and with like protection. If litigation terminates adversely to them, they are mulcted in the attorney's fees of the successful plaintiff; if it terminates in their favor, they recover no attorney's fees. It is no sufficient answer to say that they are punished only when adjudged to be in the wrong. They do not enter the courts upon equal terms. They must pay attorney's fees if wrong; they do not recover any if right; while their adversaries recover if right and pay nothing if wrong. In the suits, therefore, to which they are parties they are discriminated

against, and are not treated as others. They do not stand equal before the law. They do not receive its equal protection."

True, in that case the classification was based upon the character of the debtors, while here it is based upon the character of the claims. But that is immaterial. It still remains that some debtors under given circumstances are required to pay attorney's fees while others are not, and the question is whether there is reasonable ground for the discrimination.

There is none. The act is unequal in both its benefits and its burdens. The benefits, for instance, are conferred upon natural persons only. Why this difference? What reason is there for allowing a natural person to recover an attorney's fee in connection with a loss and damage claim, for example, while denying this right to a corporation having a claim of the same character and for the same amount? But passing from the benefits to the burdens: Why subject to the payment of attorney's fees persons who owe claims for labor or material and not so subject persons who owe claims for tools or supplies? Why should the carrier who makes an overcharge on freight or express be made to pay a penalty while none is exacted from the carrier who makes an overcharge in passenger fares or on baggage? Why compel the carrier who loses or damages freight in transit to pay an attorney's fee and, at the same time, exempt a carrier who loses or damages express or baggage? Why penalize the person who kills or injures the stock of another while permitting persons who injure or destroy any other class of property to go free? Why mulct in attorney's fees the person who owes $200.00 or less and not the person who owes $201.00 or more? Or, since the statute

is simply one imposing a penalty for a failure to pay debts, why subject to the payment of attorney's fees debtors of certain classes and exempt all other debtors? Wherein rests the obligation to pay upon one class more than upon another?

The following cases, out of the many which might be selected, well illustrate the application of the principle for which we contend: *Cotting v. Kansas City Stock Yards Co.*, 183 U. S. 79; *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540, and *Southern Railway Co. v. Greene*, 216 U. S. 40.

In *Cotting v. Kansas City Stock Yards Company* the question was whether an act of Kansas relating to stock yards, regulating their charges, etc., was in violation of the Fourteenth Amendment, in that it applied only to the Kansas City Stock Yards Company. The Court held the statute invalid. After reviewing a number of authorities it said (page 111):

> "But while recognizing to the full extent the impossibility of an imposition of duties and obligations mathematically equal upon all, and also recognizing the right of classification of industries and occupations, we must nevertheless always remember that the equal protection of the laws is guaranteed, and that such equal protection is denied when upon one of two parties engaged in the same kind of business and under the same conditions burdens are cast which are not cast upon the other. There can be no pretense that a stock yard which receives 99 head of cattle per day a year is not doing precisely the same business as one receiving 101 head of cattle per day each year. It is the same business in all its essential elements, and the only difference is that one does more business than the other. But the receipt of an extra

two head of cattle per day does not change the character of the business. If once the door is opened to the affirmance of the proposition that a State may regulate one who does much business, while not regulating another who does the same, but less business, then all significance in the guarantee of the equal protection of the laws is lost, and the door is opened to that inequality of legislation which Mr. Justice Catron referred to in the quotation above made. This statute is not simply legislation which in its indirect results affects different individuals or corporations differently, nor with those in which a classification is based upon inherent differences in the character of the business, but is a positive and direct discrimination between persons engaged in the same class of business and based simply upon the quantity of business which each may do. If such legislation does not deny the equal protection of the laws, we are unable to perceive what legislation would. We think therefore that the principle of the decision of the Supreme Court of Kansas in *State v. Haun, supra,* is not only sound, but is controlling in this case, and that the statute must be held unconstitutional, as in conflict with the equal protection clause of the Fourteenth Amendment."

Connolly v. Union Sewer Pipe Company involved the validity of the Anti-Trust Statute of Illinois, Section 9, of which provided: "The provisions of this act shall not apply to agricultural products or live stock while in the hands of the producer or raiser." It was contended that the act was void because of this exemption, and the contention was sustained. In disposing of the question the Court said (page 558):

"What may be regarded as a denial of the equal protection of the laws is a question not always

easily determined, as the decisions of this Court and of the highest courts of the states will show. It is sometimes difficult to show that a state enactment, having its source in a power not controverted, infringes rights protected by the National Constitution. No rule can be formulated that will cover every case. But upon this general question we have said that the guarantees of the equal protection of the laws means 'that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and in like circumstances.' *Missouri v. Lewis,* 101 U. S. 22, 31. We have also said: 'The Fourteenth Amendment, in declaring that no State "shall deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of any one except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses.' *Barbier v. Connolly,* 113 U. S.

27, 31. This language was cited with approval in *Yick Wo v. Hopkins*, 118 U. S. 356, 369, in which it was also said that 'the equal protection of the laws is a pledge of the protection of equal laws.' In *Hayes v. Missouri*, 120 U. S. 68, 71, we said that the Fourteenth Amendment required that all persons subject to legislation limited as to the objects to which it is directed, or by the territory within which it is to operate, 'shall be treated alike, under like circumstances and considerations, both in the privileges conferred, and in the limitations imposed.' 'Due process of law and the equal protection of the laws,' this Court has said, 'are secured, if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government.' *Duncan v. Missouri*, 152 U. S. 377, 382. Many other cases in this court are to the like effect."

In *Southern Railway Company v. Greene*, which involved a statute of Alabama imposing certain taxes upon foreign corporations doing business in the State, the Court announced the general doctrine that a classification must be based upon some real and substantial distinction which bears a reasonable and just relation to the things in respect to which it is imposed, and then proceeded (page 417):

"It is averred in the complaint, and must be taken as admitted, that there are other corporations of a domestic character in Alabama carrying on the railroad business in precisely the same way as the plaintiff. It would be a fanciful distinction to say that there is any real difference in the burden imposed because the one is taxed for the privilege of a foreign corporation to do business in the State and other for the right to be a corporation. The fact is that both corporations do

the same business in character and kind, and under the statute in question a foreign corporation may be taxed many thousands of dollars for the privilege of doing, within the State, exactly the same business as the domestic corporation is permitted to do by a tax upon its privilege, amounting to only a few hundred dollars. We hold, therefore, that to tax the foreign corporation for carrying on business under the circumstances shown, by a different and much more onerous rule than is used in taxing domestic corporations for the same privilege, is a denial of the equal protection of the laws, and the plaintiff being in position to invoke the protection of the Fourteenth Amendment, that such attempted taxation under a statute of the states, does violence to the Federal Constitution."

This Act is equally as arbitrary as any of those. Its object being to compel the prompt payment of debts, to be valid, it should apply to all debtors. Such statutes do not come within the scope of police regulations (*Railway Company v. Ellis, supra*). But if it were otherwise, the police power must be exercised with respect to the right of equal protection guaranteed by the Federal Constitution. *Yick Wo v. Hopkins,* 118 U. S. 356; *Cotting v. Kansas City Stock Yards Co., supra; Central of Georgia R. R. Co. v. Murphey,* 196 U. S. 194.

"It is of course proper (again quoting from *Railway Company v. Ellis*) that every debtor should pay his debts, and there might be no impropriety in giving to every successful suitor attorney's fees. Such a provision would bear a reasonable relation to the delinquency of the debtor, and would certainly create no inequality of right or protection. But before a distinction can be made between debtors, and one be punished for a failure to pay his debts, while another is permitted to become in

like manner delinquent without any punishment, there must be some difference in the obligation to pay, some reason why the duty of payment is more imperative in the one instance than in the other."

* * * * * * *

"Statutes have been sustained giving special protection to the claims of laborers and mechanics, but no such idea underlies this legislation. It does not aim to protect the laborer or the mechanic alone, for its benefits are conferred upon every individual in the State, rich or poor, high or low, who has a claim of the character described. It is not a statute for the protection of particular classes of individuals supposed to need protection", but for the punishment of certain debtors on account of their delinquency.

"Neither can it be sustained as a proper means of enforcing the payment of small debts and preventing any unnecessary litigation in respect to them, because it does not impose the penalty in all cases where the amount in controversy is within the limit named in the statute."

Nor can the Act be sustained because of a special duty imposed, as was the case in *Missouri Pacific Ry. Co. v. Humes*, 115 U. S. 512, and *St. L. & S. F. Ry. Co. v. Mathews*, 165 U. S. 1. It applies alike to persons upon whom special duties have been imposed and to others not similarly situated.

The classification is not based upon the nature of the business transacted. A number of the claims, it is true, could arise only in connection with the business of common carriers, but others have no connection whatever with that business or with any other special business. The statute, therefore, is clearly different from those sustained in *Seaboard Air Line v. Seegers*, 207

U. S. 73, and *Yazoo & Mississippi Valley R. R. Co. v. Jackson Vinegar Co.*, 226 U. S. 217.

Finally, the Act cannot be sustained as imposing a burden in connection with special privileges conferred upon the principle announced in *Fidelity Mutual Life Association v. Mettler*, 185 U. S. 308, and other cases of that class, for it applies to natural persons as well as to corporations; to persons who have received no special privileges as well as to persons who are privileged.

Indeed, to quote from *Railway Company v. Ellis* again, the statute arbitrarily singles out certain debtors and punishes them for a failure to perform certain duties—

> "—duties which are equally obligatory upon all debtors; a punishment not visited by reason of the failure to comply with any proper police regulations, or for the protection of the laboring classes or to prevent litigation about trifling matters, or in consequence of any special corporate privileges bestowed by the State. Unless the Legislature may arbitrarily select one corporation or one class of corporations, one individual or one class of individuals, and visit a penalty upon them which is not imposed upon others guilty of like delinquency this statute cannot be sustained.
>
> "But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this."

The Court in fact will look beyond the mere letter of a law to the conditions actually existing as affecting its application for the purpose of prohibiting arbitrary action under the guise of regulation or classification. *Yick Wo v. Hopkins, supra.*

Considered from any standpoint, "there is no fair reason for the law that would not require with equal force its extension to others whom it leaves untouched." It follows that the Act cannot be sustained.

II.

The Act of the Legislature in question violates that provision of Section 1 of the Fourteenth Amendment to the Constitution of the United States which prohibits the taking of property without due process of law.

Much of what is stated under the First Proposition is applicable here. We wish simply to add that every person under our constitutional guarantees has the right to be governed by general rules, and when particular individuals or classes of individuals are singled out and are subjected to one set of rules when other persons or classes of person under similar circumstances are not, or when any class of persons are subjected to arbitrary action, those so burdened are deprived of their liberty and property without due process of law. *Barbier v. Connolly*, 113 U. S. 27; *Yick Wo v. Hopkins*, 118 U. S. 356; *Cotting v. Kansas City Stock Yards Co.*, 183 U. S. 109; *St. L., I. M. & So. Ry. Co. v. Wynne*, 224 U. S. 354; *Interstate Commerce Commission v. L. & N. Ry. Co.*, 227 U. S. 88; *Bradley v. Richmond*, 227 U. S. 481.

In this connection, we call the Court's attention to the case of *The Chicago, Milwaukee & St. Paul Railway Company v. J. F. Polt*, decided by this Court on January 26, 1914, the opinion being by Mr. Justice Holmes. It is short and we quote it in full:

> "This was a suit against the plaintiff in error for loss of property destroyed by fire communicated from its locomotive engine. A statute of

South Dakota, after making the railroad company absolutely responsible in such cases, goes on to make it liable for double the amount of damage actually sustained unless it pays the full amount within sixty days from notice. If, within sixty days, it shall 'offer in writing to pay a fixed sum, being the full amount of the damages sustained, and the owner shall refuse to accept the same, then in any action thereafter brought for such damages when such owner recovers a less sum as damages than the amount so offered, then such owner shall recover only his damages, and the railway company shall recover its costs.' *South Dakota Laws*, 1907, *c.* 215. The plaintiff got a verdict for $780. The railroad had offered $500; less, that is, than the amount of the verdict, while the plaintiff, on the other hand, demanded more. In his demand, his declaration and his testimony, he set the damage at $838.20. A judgment for double damages was affirmed by the Supreme Court of the State. 26 *So. Dak.* 378.

"The defendant in error presented no argument, probably because he realized that under the recent decisions of this Court, the judgment could not be sustained. No doubt the States have a large latitude in the policy that they will pursue and enforce, but the rudiments of fair play required by the Fourteenth Amendment are wanting when a defendant is required to guess rightly what a jury will find, or pay double if that body sees fit to add one cent to the amount that was tendered, although the tender was obviously futile because of an excessive demand. The case is covered by *St. Louis, Iron Mountain & Southern Ry. Co. v. Wynne*, 224 U. S. 354. It is not like those in which a moderate penalty is imposed for failure to

satisfy a demand found to be just. *Yazoo & Mississippi Valley R. R. Co. v. Jackson Vinegar Co.*, 226 U. S. 217."

III.

The act of the Legislature in question is in part a regulation of, a burden upon and an interference with interstate commerce, contrary to Subdivision 3, Section 8, Article I of the Constitution of the United States, and is in conflict with the act to regulate commerce approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, and to that extent is void, and since the good, if any, and the bad in it are so intermingled that the one cannot be separated from the other, the act must fail in whole.

The provisions of the Act relating to overcharge and loss and damage claims are not confined to shipments wholly between points within the State. They apply as well to interstate shipments.

It is a violation of the Act to Regulate Commerce for a carrier to make a charge above the legal rate on an interstate shipment of freight or express, and for such overcharge the shipper has his remedy, including the right to recover a reasonable attorney's fee (*Section 8 of the Act to Regulate Commerce* as amended June 18, 1910). The provision relating to such fee, however, is that it shall be reasonable and shall "be fixed by the Court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case." This provision is different from that of the Texas statute. But, whether the overcharge be intentional or not, Congress has taken full control of rate making and charging. (*Southern Railway Co. v. Reid*, 222 U. S. 438). Again, the Federal law, within

certain limits, gives the shipper whose freight or express is lost or damaged in transit a cause of action, but this does not include the right to recover an attorney's fee. *Atlantic Coast Line R. R. Co. v. Riverside Mills,* 219 U. S. 186.

One of the Acts—the two being in conflict—must yield. It is not now an open question that the Federal law supersedes or prevails over State enactments. This question has been before the Court so often and so recently as to make it unnecessary to do more than cite the cases. *Sinnot v. Davenport,* 63 U. S. 242; *G. C. & S F. Ry. Co. v. Hefley,* 158 U. S. 98; *Northern Pacific Ry. Co. v. Washington,* 222 U. S. 370; *Southern Railway Co. v. Reid, supra; Southern Railway Co. v. Reid & Beam,* 222 U. S. 444; *Mondou v. N. Y., N. H. & H. R. R. Co.,* 223 U. S. 1; *C. R. I. & P. Ry. Co. v. Hardwick Elevator Co.,* 226 U. S. 426; *Adams Express Co. v. Croninger,* 226 U. S. 491; *Kansas City Southern Railway Co. v. Carl,* 227 U. S. 639; *M. K. & T. Ry. Co. v. Harriman,* 227 U. S. 657; *Simpson et al. v. Shepard,* 230 U. S. 352; *Adams Express Company v. The City of New York,* decided by this Court January 5, 1914.

The Act being void in part, the question remains, Can any portion of it stand? Is that which is valid, if any, separable from that which is invalid? This question should be answered in the negative. *The Employers Liability Cases,* 207 U. S. 501; *Illinois Central R. R. Co. v. McKendree,* 203 U. S. 529; *El Paso & N. E. R. R. Co. v. Gutierrez,* 215 U. S. 97.

The following is from the *Employers Liability Cases:*

> "As the act before us by its terms relates to every common carrier engaged in interstate commerce and to any of the employes of every such carrier, thereby regulating every relation of a car-

rier engaged in interstate commerce with its servants and of such servants among themselves, we are unable to say that the statute would have been enacted had its provisions been restricted to the limited relations of that character which it was within the power of Congress to regulate. On this subject the opinion in the Trade-mark Cases, 100 U. S. 82, where an act of Congress concerning trade-marks was held to be unconstitutional, because too broad in its scope, is pertinent and instructive. The Court said (page 99):

"'If we should, in the case before us, undertake to make by judicial construction a law which Congress did not make, it is quite probable we should do what, if the matter were now before that body, it would be unwilling to do; namely, make a trade-mark law which is only partial in its operation, and which would complicate the rights which parties would hold, in some instances under the act of Congress, and in others under state law. *Cooley, Const. Lim.*, 178, 179; *Commonwealth v. Hitchings*, 5 Gray (Mass.) 482.'"

It was held that the provisions of the statute were inseparable as to the matters mentioned, and, therefore, they could not stand as to any employes.

Illinois Central R. R. Co. v. McKendree involved the validity of an order of the Secretary of Agriculture covering both intrastate and interstate commerce. The Court said it had no means of knowing whether the Secretary would have made the order if limited to interstate commerce, it being in terms single and indivisible, and declared it void in whole. The following from *United States v. Reese*, 92 U. S. 221, was quoted with approval:

"We are, therefore, directly called upon to decide whether a penal statute enacted by Congress,

with its limited powers, which is in general language broad enough to cover wrongful acts without as well as within the constitutional jurisdiction, can be limited by judicial construction so as to make it operate only on that which Congress may rightfully prohibit and punish. For this purpose we must take these sections of the statute as they are. We are not able to reject a part which is unconstitutional and retain the remainder, because it is not possible to separate that which is unconstitutional, if there be any such, from that which is not. The proposed effect is not to be attained by striking out or disregarding words that are in the section, but by inserting those that are not now there. Each of the sections must stand as a whole, or fall altogether. The language is plain. There is no room for construction, unless it be as to the effect of the Constitution. The question, then, to be determined is, whether we can introduce words of limitation into a penal statute so as to make it specific, when, as expressed, it is general only."

In *Railway Co. v. Gutierrez* the Court stated the question to be considered in cases of this kind as follows:

"It remains to inquire whether it is plain that Congress would have enacted the legislation had the act been limited to the regulation of the liability to employes engaged in commerce within the District of Columbia and the territories. If we are satisfied that it would not, or that the matter is in such doubt that we are unable to say what Congress would have done omitting the unconstitutional feature, then the statute must fall. *Illinois Central R. R. Co. v. McKendree*, 203 U. S. 514; *Employers' Liability Cases*, 207 U. S., *supra*."

Applying this test, no part of the act can stand, even if it be not in violation of the Fourteenth Amendment; for the Court cannot say that the Legislature would have passed it with the provision relating to traffic claims limited to intrastate commerce.

IV.

The provisions of the act of the Legislature in question relating to overcharges and loss and damage claims, as to interstate shipments, are void.

This subject was incidentally presented in a preceding part of the argument, but as it is controlling if our contentions under the Fourteenth Amendment be not sustained, we wish to discuss the question a little further.

As already said, the supremacy of Congress in the field of interstate commerce is well settled. Where its jurisdiction is exclusive, as is the case in matters that regulate, burden or interfere with such commerce, the states cannot legislate at all. Their enactments are void, whether Congress acts or not. *H. & T. C. R. R. Co. v. Mayes,* 201 U. S. 321; *Central of Georgia R. R. Co. v. Murphey,* 196 U. S. 194; *McNeill v. Southern Ry. Co.,* 202 U. S. 543, and *Yazoo & Mississippi Valley R. R. Co. v. Greenwood Grocery Co.,* 227 U. S. 1. Where the jurisdiction of the two powers is concurrent, State enactments, although passed in the exercise of undoubted powers, must yield when Congress enters the field. The only question in such cases is whether Congress has occupied the ground. If it has not, the states may pass such regulations as aid interstate commerce, but, although incidentally affecting it, do not regulate, burden or interfere with it. For regulations of this class see *Missouri Pacific Railway Co. v. Lara-*

bee Mills, 211 U. S. 612, involving what the Court termed a common-law duty to afford equal switching service to shippers, notwithstanding the cars were eventually to be engaged in interstate commerce; *Atlantic Coast Line R. R. Co. v. Mazursky*, 216 U. S. 122, involving a statute of South Carolina requiring carriers to settle within a specified time claims for loss of or damage to freight; and *Western Union Telegraph Co. v. Milling Co.*, 218 U. S. 406, involving the violation of a duty to transmit or deliver telegrams imposed by State statute. But when Congress enters, the power of the states is at an end. (*Southern Railway Co. v. Reid*, 222 U. S. 424; *Mondou v. N. Y., N. H. & H. R. R. Co.*, 223 U. S. 1; *Adams Express Co. v. Croninger*, 226 U. S. 491; *C. R. I. & P. Ry. Co. v. Hardwick Elevator Co.*, 226 U. S. 435; *Kansas City Southern Ry. Co. v. Carl*, 227 U. S. 639, and *M. K. & T. Ry. Co. v. Harriman*, 227 U. S. 657.)

The present Act, as applied to interstate commerce, comes within the last class. Congress, under the powers conferred upon it, has taken jurisdiction.

It is too plain for argument that an intentional overcharge on an interstate shipment is a violation of the Act to Regulate Commerce. Congress, therefore, has not only legislated with respect to this particular subject-matter, but the Supreme Court of Texas has held that the State courts are without jurisdiction to entertain claims covering such violations (*G. C. & S. F. Ry. Co. v. Moore*, 83 S. W. 362.)

If the overcharge be unintentional or otherwise made in such manner as not to constitute a violation of the law, still the Act to Regulate Commerce controls, for, as was said in *Southern Railway Co. v. Reid, supra*, the provisions of the Act are directed at the abuses

most to be feared, including unreasonableness in rates and discriminations, and it is evident that Congress has taken full control of the subject of interstate rate making and charging.

Coming to the question of loss and damage claims, it is also clear that this matter is covered by the Act to Regulate Commerce. That part of Section 20 of this Act as amended June 29, 1906, 34 Stat. 584, c. 3591, commonly called the Carmack Amendment, requires the carrier to issue a bill of lading for an interstate shipment and makes the initial carrier liable for the loss of or damage to property while on its own line and also while on the lines of connecting carriers. The constitutionality of this amendment was sustained in *Atlantic Coast Line v. Riverside Mills, supra,* and under it no attorneys' fees are recoverable, as the case just cited expressly holds.

The following from *C. R. I. & P. Ry. Co. v. Hardwick Elevator Co., supra,* which involved the right of a shipper to recover penalties for the failure of a railway company to furnish cars for use in interstate traffic in accordance with the provisions of a State law, is instructive in this connection (page 435):

> "As legislation concerning the delivery of cars for the carriage of interstate traffic was clearly a matter of interstate commerce regulation, even if such subject was embraced within that class of powers concerning which the State had a right to exert its authority in the absence of legislation by Congress, it must follow in consequence of the action of Congress to which we have referred that the power of the State over the subject-matter ceased to exist from the moment that Congress exerted its paramount and all-embracing authority over the subject. We say this because the ele-

mentary and long settled doctrine is that there can be no divided authority over interstate commerce and that the regulations of Congress on that subject are supreme. It results, therefore, that in a case where from the particular nature of certain subjects the State may exert authority until Congress acts under the assumption that Congress by inaction has tacitly authorized it to do so, action by Congress destroys the possibility of such assumption, since such action, when exerted, covers the whole field and renders the State impotent to deal with a subject over which it had no inherent but only permissive power. *Southern Ry. Co. v. Reid*, 222 U. S. 424."

In *Adams Express Co. v. Croninger, supra*, the shipper sought to recover the full market value of an interstate package, notwithstanding a less valuation fixed by the bill of lading, as he was authorized to do under the State law. The express company defended on the ground that the Federal law controlled and under it the bill of lading provision was binding. This contention was sustained. The Court, referring to the Act to Regulate Commerce, and especially the Carmack Amendment, said (page 505):

"That the legislation supersedes all the regulations and policies of a particular State upon the same subject results from its general character. It embraces the subject of the liability of the carrier under a bill of lading which he must issue and limits his power to exempt himself by rule, regulation or contract. Almost every detail of the subject is covered so completely that there can be no rational doubt that Congress intended to take possession of the subject and supersede all state regulation with reference to it. Only the silence of

Congress authorized the exercise of the police power of the State upon the subject of such contracts. But when Congress acted in such a way as to manifest a purpose to exercise its conceded authority, the regulating power of the State ceased to exist. *Northern Pacific Ry. v. State of Washington,* 222 U. S. 370; *Southern Railway v. Reid,* 222 U. S. 424; *Mondou v. Railroad,* 223 U. S. 1.

"To hold that the liability therein declared may be increased or diminished by local regulation or local views of public policy will either make the provision less than supreme or indicate that Congress has not shown a purpose to take possession of the subject. The first would be unthinkable and the latter would be to revert to the uncertainties and diversities of rulings which led to the amendment. The duty to issue a bill of lading and the liability thereby assumed are covered in full, and though there is no reference to the effect upon state regulation, it is evident that Congress intended to adopt a uniform rule and relieve such contracts from the diverse regulation to which they had been theretofore subject."

It was argued that the amendment was not exclusive, as shown by the proviso, but this contention was not upheld, the Court saying (page 507):

"To construe this proviso as preserving to the holder of any such bill of lading any right or remedy which he may have had under existing Federal law at the time of his action, gives to it a more rational interpretation than one which would preserve rights and remedies under existing state laws, for the latter view would cause the proviso to destroy the act itself. One illustration would be a right to a remedy against a succeeding carrier, in preference to proceeding against the primary

> carrier, for a loss or damage incurred upon the line of the former. The liability of such succeeding carrier in the route would be that imposed by this statute, and for which the first carrier might have been made liable."

The principle of the Croninger case was reaffirmed in *Kansas City Southern Ry. Co. v. Carl and M. K. & T. Ry. Co. v. Harriman, supra.* In the former case the Court said: "As the shipment was interstate the contract was controlled by the 20th section of the Act of Congress of June 29, 1906," and in the latter (page 672):

> "The liability sought to be enforced is the 'liability' of an interstate carrier for loss or damage under an interstate contract of shipment declared by the Carmack Amendment of the Hepburn Act of June 29, 1906. The validity of any stipulation in such a contract which involves the construction of the statute, and the validity of a limitation upon the liability thereby imposed is a Federal question to be determined under the general common law, and, as such, is withdrawn from the field of state law or legislation."

If it be contended that plaintiff in error was not the initial carrier, and, therefore, that the foregoing does not apply, this contention is met by the following from *Kansas City Southern Ry. Co. v. Carl* (page 648):

> "It is also true that any limitation of liability contained in its contract which would be valid in its own behalf would likewise inure to the benefit of its connecting carrier. The liability of any carrier in the route over which the articles were routed, for loss or damage, is that imposed by the

act as measured by the original contract of shipment so far as it is valid under the act."

The completeness with which Congress has taken possession of this field was observed by this Court in the very recent case of *Adams Express Company v. City of New York,* decided January 5, 1914, which involved the validity of an ordinance of the City of New York requiring expressmen, among others, to secure a license and give bond, as applied to interstate commerce.

On the point the Court said, with reference to securing a license:

> "Not only is the latter protected from the action of the State, either directly or through its municipalities, in laying direct burdens upon it, but, in the present instance, Congress has exercised its authority and has provided its own scheme of regulation in order to secure the discharge of the public obligations that the business involves. *Act of June* 29, 1906, *c.* 3591, 34 *Stat.* 584; *Adams Express Co. v. Croninger,* 226 U. S. 491, 505; *United States v. Adams Express Co.,* 229 U. S. 381."

And with reference to giving bond:

> "As applied to the company's business of interstate transportation, it must fall with the provision regarding the license, and, further, it must be regarded as repugnant to the exclusive control asserted by Congress in occupying the field of regulation with regard to the obligations to be assumed by interstate express carriers. *Adams Express Co. v. Croninger, supra; Southern Ry. Co. v. Reid,* 222 U. S. 424; *Same v. Reid & Beam, Id.,* 444, 447."

It follows that whether the act violates the Fourteenth Amendment or not, the judgment for an attorney's fee must be reversed because of the paramount regulation by Congress.

Respectfully submitted,

ALEXANDER S. COKE,
A. H. McKNIGHT,
Attorneys for Plaintiff in Error.

JOSEPH M. BRYSON,
A. B. BROWNE,
Of Counsel.